

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED

April 28, 2011

In the Matter of HINSON, Minors.

No. 299908
Wayne Circuit Court
Family Division
LC No. 99-381278

In the Matter of EUSEARY, Minors.

No. 299909
Wayne Circuit Court
Family Division
LC No. 99-381278

Before: FORT HOOD, P.J., and TALBOT and MURRAY, JJ.

PER CURIAM.

In Docket No. 299908, respondent-mother appeals as of right from the trial court order terminating her parental rights to the children under MCL 712A.19b(3)(g) and (j). In Docket No. 299909, respondent-father appeals as of right from the same order terminating his parental rights to the children, also under §§ 19b(3)(g) and (j). We affirm the portion of the trial court's order terminating respondent-mother's parental rights and reverse and remand for further proceedings the portion terminating respondent-father's parental rights.

In 1999, the court placed seven of respondents' children in its temporary care following allegations that respondents failed to address one of the children's diabetes, the family home was unsuitable, respondent-mother and L. L. Euseary had tested positive for cocaine at the child's birth, and respondents had left the children without supervision. Respondents were provided with a parent-agency agreement. Respondent-father complied with the agreement, and the court placed the children in his custody and dismissed its jurisdiction over the children.

Respondent-mother subsequently gave birth to S. J. Euseary in 2004, and both tested positive for cocaine and syphilis. The court placed the child in its temporary custody. Respondent-mother complied with the treatment plan in that case, and the court placed S. J. back in her care and terminated its wardship over the child in 2006.

In October 2009, petitioner filed a permanent custody petition seeking to terminate both respondents' parental rights to the children. At that time, all the children were in respondent-

father's custody except for S. J., who was placed with respondent-mother. The petition alleged that S. M. Hinson had tested positive for genital herpes and had revealed to police officers that she had been sexually molested by her paternal uncle who lived with her and her siblings in the home they shared with respondent-father. The petition also alleged that respondent-mother had a history of substance abuse, with cocaine and marijuana being her drugs of choice, that she admitted using cocaine on an almost daily basis in September 2009, and that she assisted in parenting the children with respondent-father. After respondent-mother admitted a substance abuse problem and respondent-father offered a no contest plea, the court concluded that it had jurisdiction over the children and ordered the parties to participate in a Clinic for Child Study evaluation.

The Clinic for Child Study report recommended against termination of respondent-father's parental rights, noting that, although he had sometimes allowed respondent-mother or his brother to care for the children, he had provided the children with a "moderately stable environment for the past several years." The report cautioned, however, that respondent-father should be able to demonstrate that he had a stable child care provider to monitor the children when he was unavailable and that he could address the children's medical needs. The report indicated a "grave concern" regarding respondent-mother's ability to remain substance free in light of her lengthy substance-abuse history and recognized the impact her relapse would have on the children. The clinician recommended respondent-mother be required to complete a treatment plan and show that she could maintain sobriety for at least six months.

At the termination hearing, respondent-mother admitted that she had a history of cocaine and marijuana use. She testified, however, that she completed an intensive 90-day inpatient drug treatment program in February 2010 and was enrolled in outpatient treatment, which included individual counseling. She testified that she had not used cocaine since early 2009 or marijuana since September 2009 and was committed to being substance-free. She admitted that she had used cocaine and marijuana intermittently over a 20-year period and that she had completed at least two treatment plans before the current program and had subsequently relapsed.

Respondent-father admitted that he relied upon respondent-mother to help care for the children. She helped get them ready in the morning after he left for work, she took them to doctor visits, and she sometimes came after school to care for them. Because her parental rights to the children had not been terminated, he felt that she was entitled to see the children. He was aware that respondent-mother had a lengthy drug history, but stated that she never used drugs in front of the children and she never appeared under the influence when she cared for them. Although he admitted that he and respondent-mother had been looking for housing together to simplify caring for the children, he contended that he would be capable of caring for the children without respondent-mother's assistance and was prepared to keep respondent-mother away from the children if required to do so by the court. Respondent-father also testified that he had turned his brother over to authorities after being notified of S. M. Hinson's allegations of sexual molestation.

The caseworkers testified that respondents and the children were closely bonded. Respondent-mother consistently visited the children and her behavior was appropriate. One of the caseworkers conceded that termination of respondents' parental rights would harm the children and, accordingly, services would have to be in place to deal with the adjustment.

After closing arguments, the children's counsel expressed some concerns that one of the children, then 12 years old, had had a sexual encounter with her sibling, then seven. The court asked that petitioner submit any medical summaries pertaining to the children. Subsequently, the court admitted medical records showing that L .L. Euseary had gonorrhea, a sexually transmitted disease, and that T. D. Hinson had poor anal tone.

Citing respondent-mother's lengthy history of substance abuse and the strong likelihood of a relapse and respondent-father's substantial reliance on respondent-mother's assistance in parenting the children and his failure to recognize the risk her substance abuse posed, the court terminated both respondents' parental rights under §§ 19b(3)(g) and (j). The trial court acknowledged the bond between respondents and the children, but found that termination was in the children's best interests based on the children's need for stability and permanency.

On appeal, respondents challenge termination of their parental rights. Termination under §§ (3)(g) and (j), requires clear and convincing evidence of the following:

(g) The parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age.

* * *

(j) There is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent. [MCL 712A.19b.]

Only a single statutory ground needs to be proven in order to terminate parental rights. *In re McIntyre*, 192 Mich App 47, 50; 480 NW2d 293 (1991).

The foregoing evidence concerning respondent-mother's drug use and repeated relapses following her participation in drug treatment programs shows that the trial court did not clearly err in finding termination of her parental rights was appropriate under §§19b(3)(g) and (j) and that termination was in the children's best interests. *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). Although respondent-mother contends that the court improperly considered statements made by the children's counsel following the close of proofs, she fails to specifically identify the statements at issue or analyze how such statements were improperly admitted. A party may not merely announce a position and leave it to the court to discover and rationalize the basis for the claim. *In re Toler*, 193 Mich App 474, 477; 484 NW2d 672 (1992). Thus, the trial court did not clearly err in terminating respondent-mother's parental rights to the children.

A trial court's finding that a statutory ground for termination has been established by clear and convincing evidence and the best interest determination are reviewed for clear error. MCR 3.977(K); *In re Trejo Minors*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). Petitioner may not focus services on one parent to the exclusion of the other. *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010). Rather, the agency must engage in reasonable efforts to reunify the child and the family in all cases except where aggravated circumstances are presented. *Id.* Termination of parental rights is premature when a respondent is not afforded a meaningful and adequate opportunity to participate. *Id.*

With regard to respondent-father, we conclude that the trial court clearly erred in terminating his parental rights. In terminating respondent-father's parental rights to the children, the court focused on the fact that respondent-father should have been aware of respondent-mother's chronic substance abuse problem and taken affirmative steps to protect the children from her rather than planning together with her for the children's return. However, the evidence showed that respondent-mother's parental rights to the children had not been terminated. Petitioner failed to advise respondent-father that he could not rely on respondent-mother. Rather, respondent-father testified that he felt obligated to allow her to see the children because the court had not terminated her parental rights in 2002, and her assistance had benefited respondent-father and the children. The evidence also established that respondent-father was aware of the children's health issues¹ and acted to protect them when made aware of the allegations against his brother.² A review of the record reveals that petitioner sought to terminate respondent-father's parental rights because of "department policy" and the lengthy case history. However, the bulk of the history involved respondent-mother, and there is no indication that petitioner sought to reunify respondent-father with his children with a plan that excluded respondent-mother. Therefore, termination of parental rights was premature. *Mason*, 486 Mich at 152. In light of this evidence, the trial court clearly erred in terminating respondent-father's parental rights under §§ 19b(3)(g) and (j). MCR 3.977(E).

In Docket No. 299908, we affirm the termination of respondent-mother's parental rights to the children. In Docket No. 299909, we reverse the termination of respondent-father's parental rights and remand to the trial court for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Karen M. Fort Hood
/s/ Michael J. Talbot
/s/ Christopher M. Murray

¹ Respondent-father was faulted for the children's medical conditions. However, one of the teenage children testified that she knew what she should consume, but did not necessarily do so. There was no indication that respondent-father deliberately provided a diet to his children that was contrary to their needs.

² Respondent-father testified that he learned of the sexual molestation allegations by his brother shortly after his daughter's hospitalization and removed his brother from his home within two days. Respondent-father also testified that he was angry that his brother was not yet prosecuted and believed his daughter's allegations. The trial court did not make any credibility determinations contrary to this testimony.